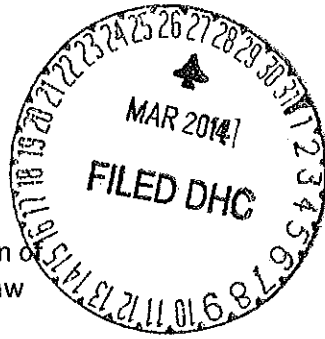


STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:

Petition For A Stay of The
Remainder of the Suspension of
And Reinstatement of the Law
License of Gary B. Kivett



BEFORE THE DISCIPLINARY
HEARING COMMISSION OF THE
NORTH CAROLINA STATE BAR
~~13 BSR2~~ and 11 DHC 15

14BSR2

PETITION FOR
STAY AND
REINSTATEMENT

NOW COMES THE PETITIONER, GARY B. KIVETT, pro se, pursuant to Section 27 NCAC 1B §.0125 of the rules and regulations of the North Carolina State Bar, and petitions for a stay of the balance of Petitioner's suspension and for reinstatement of his license to practice law in the State of North Carolina. In support of this Petition, the Petitioner respectfully shows the following:

1. That he was suspended from the practice of law for a period of four (4) years dating from February 3, 2012.
2. The alleged acts which formed the basis of this disciplinary action occurred approximately six and one-half years ago, or earlier.
3. That petitioner practiced for approximately five years after the date of the last alleged act which formed the basis of this disciplinary action.
4. That during this five year period petitioner met with female clients both in his office and at the courthouse and in the community on a regular basis without either incident or complaint.
5. That pursuant to the terms of the Order, after the completion of one year of active suspension of his license, Petitioner may apply for a stay of the balance of the suspension upon the filing of a verified petition with the Secretary of the North Carolina State Bar at least (30) days before any proposed effective date of the stay.
6. That less than seven (7) years have elapsed since the date of Petitioners suspension.
7. That the Petitioner has satisfied the minimum continuing legal education requirements as set forth in the North Carolina State Bar Rules for Continuing Legal Education for the calendar year 2013 and for all prior years thereto and is current on all of his requirements for Continuing Legal Education.
8. That the petitioner has paid all other money which might be owed to the State Bar.
9. That the Petitioner submitted his license and membership card to the North Carolina State Bar within thirty (30) days of the Service of the Order of discipline as required by the Order.

10. That the petitioner paid all costs and administrative fees, including deposition costs within thirty (30) days of the date of service of the costs upon him, as was required by the Order of discipline.

11. That the petitioner attempted to comply with the wind down provisions contained in 27 NCAC 1 B §.0124 and did file his affidavit with the Secretary of the North Carolina State Bar within ten (10) days of the effective date of the Order of Discipline as was required by the Order.

12. That the Office of Counsel for the North Carolina State Bar objected to the way in which the wind down was handled and a hearing was held on this matter on May 23, 2013.

13. That the Disciplinary Hearing Commission did find that technical violations occurred in the wind down provisions but imposed no further sanctions as a result of said violations. The statement of the chairman regarding said violations was as follows: "The wind-down violations are technical and we do find that you violated these provisions, but that's not why we're here. If those were the only violations, I don't think we would be here."

14. That the Petitioner provided the State Bar with a street address and mailing address at which clients seeking return of their files and records in Petitioner's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon him within fifteen days of the effective date of the Order of Discipline as was required by the Order.

15. That the Petitioner has submitted to comprehensive psychological evaluations at his sole expense by two separate psychologists who specialize in treating sexual offenders in the professions and who were approved in advance by Margaret Cloutier and the Office of Counsel of the North Carolina State Bar. The psychologists' providing said evaluations were Dr. Anthony Sciara and Roger Wallace, MA of Foundations Psychological Services, P.A.

16. That both Doctor Sciara and Mr. Wallace have certified under Oath based on their independent comprehensive evaluations of the Petitioner, that in their professional opinion, Petitioner does not suffer from any condition creating a predisposition for inappropriate sexual behavior and that Petitioner does not suffer from any mental, psychological, or emotional condition that significantly impairs his professional judgment, performance or competence in the representation of female clients.

17. That the Petitioner has attached to this reinstatement petition the sworn statement from both Dr. Sciara and Mr. Wallace along with releases signed by the Petitioner instructing them to discuss their evaluations of Petitioner with, and to release any corresponding records to, a representative of the Office of Counsel.

18. That the petitioner complied with the treatment recommendations made by Mr. Roger Wallace, Foundations Psychological Services, P.A. Whereby Mr. Wallace recommended that the petitioner undergo some brief and limited psycho-educational therapy. The petitioner attended over thirty sessions of individual and psycho-educational group therapy sessions, was fully cooperative, attended all appointments and participated actively. This treatment was completed in May of 2013.

19. That the petitioner has complied with the recommendation of Dr. Anthony Sciara that he obtain and meet with an older attorney to be a mentor to Petitioner to discuss ethical issues with

respect to legal ethics in that he meets on a regular basis with Mr. Shelly Blum, a still practicing attorney in the area who is well thought of and has an impeccable reputation for his ethical conduct.

20. That the Petitioner has executed written releases authorizing the Office of Counsel to confer with Mr. Roger Wallace, Foundations Psychological Services, P.A. for the purpose of determining if the petitioner has co-operated and complied with the recommended treatment.

21. That the Petitioner agrees not to revoke these releases during the period of the stayed suspension.

22. That the Petitioner has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change of address within ten (10) days of such change.

23. That the Petitioner has responded to all communications from the North Carolina State Bar within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the date of the Petitioner's Order of Suspension which was February 5, 2012. With respect to this requirement there were no communications received or petitions for fee dispute resolutions received.

24. That the Petitioner has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension.

25. That the Petitioner has properly wound down his law practice and complied with the requirements of §.0124 of the North Carolina State Bar Discipline and Disability Rules. The hearing on this matter is addressed in the petition above.

26. That the Petitioner has abstained from the unauthorized practice of law during the period of suspension.

27. That the petitioner has otherwise complied with the requirements of 27 NCAC 1B §.0125(b).

Wherefore, the Petitioner prays as follows:

1. That the remaining two (2) years of the Petitioner's suspension of his law license be stayed and that his license to practice law in North Carolina be restored to active status upon 30 days from the filing hereof.

This the 24th day of March, 2014.

Gary B. Kivett

Gary B. Kivett
Petitioner
P.O. Box 707
Spruce Pine, N.C. 28777

(828) 467-4993
State Bar No. 16354

STATE OF NORTH CAROLINA

COUNTY OF Mitchell

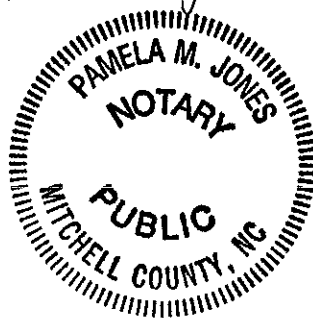
Gary B. Kivett, first being duly sworn, deposes and says that he is the Petitioner in the above-entitled action, that he has read the foregoing Petition and know the contents thereof; that the same are true of his own knowledge except as to those matters and things stated upon information and belief; and as to those things, he believes them to be true.

This the 24th day of March, 2014.

Gary B. Kivett
Gary B. Kivett

Sworn to and subscribed before me,
A Notary Public, this the 24th day of
March, 2014.

Pamela M. Jones
Notary Public



• My Commission Expires: 8-28-14

**Summary of Treatment Services Provided to Gary Kivett by
Foundation Psychological Services, PA**

Following findings by The North Carolina Bar Association concerning his unethical conduct and sexual improprieties Mr. Kivett came to this agency for a psychological evaluation on March of 2012. After an extensive psychological evaluation consisting of multiple interviews, review of personal history and psychological testing, Mr. Kivett was determined to be at a low risk for engaging in the sexual behavior that led him to violate his professional ethics. In addition it was clear that Mr. Kivett was the type of person who would learn from his mistakes and subsequent consequences, and avoid acting in an unethical manner, even without a therapeutic intervention. It was also clear from the evaluation that Mr. Kivett did not have a personality disorder that would predispose him to disobey rules and ethical guidelines. However some issues were identified which could have been contributing factors in Mr. Kivett's decision to act in an unethical manner. Those issues were seen as amenable to change and improvement within the context of professional counseling. It was also evident after the evaluation that Mr. Kivett was a person who was open to making positive changes in his life.

Mr. Kivett began counseling shortly after his evaluation was complete. He was fully cooperative, attended all appointments and participated actively. He attended over thirty sessions of individual and psycho-educational group therapy sessions. He successfully completed treatment in May of 2013. Mr. Kivett was at a low risk for reengaging in unethical behavior before his treatment began. Now that he has successfully completed treatment he is seen as having the ability and the motivation to act in a manner that is consistent with his professional ethics. It is my professional opinion that, if he is allowed to practice law, he will not violate professional ethics. Although there has been some discussion about Mr. Kivett limiting his contact with female clients in the future, this would be for Mr. Kivett's benefit. Since he has represented individuals who have engaged in criminal conduct, there is the possibility that someone could falsely accuse him of inappropriate sexual behavior.



Roger Wallace, MA
Clinical Director, Foundation Psychological Services, PA

Foundation Psychological Services, P.A.
Roger Wallace, M.A.

Office Location ~ 410 Mills Gap Road, Arden, NC 28704
Mailing Address ~ PO Box 127, Arden, NC 28704
rwallace@psychserv.org

Phone ~ (828) 654-0111
Fax ~ (828) 654-0997

12/11/2013

My name is Roger Wallace, M.A. and I am a North Carolina Licensed Psychological Associate. I have performed a comprehensive psychological evaluation of Gary B. Kivett. Mr. Kivett has subsequently finished 38 sessions of therapy sessions. He has successfully completed all the therapy that is clinically indicated. Based upon said evaluation and the therapy that Mr. Kivett received, it is my professional opinion that Mr. Kivett does not now suffer from any condition creating a predisposition for inappropriate sexual behavior. "Condition," as referred to above, is meant as any condition amenable to detection by a psychological evaluation that employs objective psychological tests and empirical data.

Based upon said evaluation and the therapy that Mr. Kivett received, it is also my professional opinion that Mr. Kivett does not suffer from any mental, psychological or emotional condition that significantly impairs his professional judgment, performance, or competence in the representation of female clients.

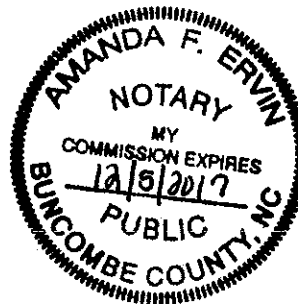
Roger Wallace, M.A. _____

Witness to the signature of Roger Wallace _____

Buncombe County North Carolina

I certify that Roger Wallace personally appeared before me on this day December 11, 2013 and signed this document.

Amanda F. Ervin, Notary Public
My commission expires: 12/5/2017



RE-EVALUATION REPORT

In the Matter of:
Gary B. Kivett vs. North Carolina State Bar

Identifying Data:

Gary B. Kivett is a 48-year-old Caucasian male who has not been practicing law for approximately two years. He gave up his practice on February 5, 2012 as a result of a consent agreement with the North Carolina State Bar. This is in relation to a disciplinary case and a Consent Order of Discipline entered on January 3, 2012. That order indicates "Kivett may apply for a stay of any remaining period of suspension after serving one year of the act of suspension and upon completion with the conditions stated in the order."

That order goes on to say (in part) that during the time of the suspension "Kivett must establish by clear, cogent, and convincing evidence of compliance with the following conditions, (a) that defendant has submitted to comprehensive psychiatric or psychological evaluations at defendant's sole expense by two separate psychiatrist or psychologists who specialize in treating sexual offenders in the profession and who have been approved in advance by the Office of Counsel of the North Carolina State Bar." My interaction with him was as one of the professionals to perform evaluations.

Evaluation Procedure:

My initial evaluation with Mr. Kivett occurred on May 2, 2012. At that time I performed an extensive history, background and clinical evaluation. In addition, testing was performed with Mr. Kivett using the Rorschach Inkblot Test and the Minnesota Multiphasic Personality Inventory 2, both of which were administered in May 2012.

Additionally, I reviewed multiple correspondence provided to me by the Bar regarding the allegations against Mr. Kivett. On February 28, 2013 I had an independent, approximately one-hour conversation with the representative for the bar, Margaret T. Cloutier. During that independent telephone conversation, which was authorized by Mr. Kivett, there was an open discussion in great detail about my evaluation of Mr. Kivett.

As a result of that 2012 evaluation with Mr. Kivett I produced an evaluation report dated July 15, 2012. In addition, Mr. Kivett's counsel, Mr. Gerald R. McKinney, had requested clarification of some statements made in my report and that clarification was presented in a November 26, 2012 letter. Finally, I participated in a deposition regarding Mr. Kivett on May 7, 2013.

Mr. Kivett returned to be reevaluated by me in early January 2014 for purposes of determining the appropriateness of requesting reinstatement of his licensure. In the Consent Order of Discipline, as the agreement indicates, he is allowed to apply for reinstatement of his license during that timeframe. He had previously, in 2013, requested reinstatement after his first year of licensure suspension. This occurred after compliance with psychological evaluations required by the order.

He was not reinstated at that time. My interviews in 2014 were for the purpose of evaluating Mr. Kivett for the purpose of another consideration of reinstatement of his licensure. That second evaluation included interviews on January 9, 2014 for approximately two hours and February 5, 2014, again an interview of approximately two hours.

During those interviews, Mr. Kivett was quite forthright. He was contrite in understanding that he had been inappropriate with his female client and recognized that behavior could never happen again in the future. He also points out that he did not do anything inappropriate with female clients even prior to the 2012 timeframe when it was indicated to him that he was being investigated and that there were complaints against him.

Since that time, he has been continuing to consider what his life is about, consider his interest in continuing to seek reinstatement of his law license and considering the impact his current suspension would have on his future practice of law.

He reports he has supported himself over the last two years working on personal finances and properties which he owns. He recognizes at this point that he may have been "overly ambitious in trying to get back so soon" his law license in 2013.

He recognized the importance of the recommendations made in my previous report that he seek a mentor. He has met with Mr. Shelly Bloom, Attorney at Law, on a regular basis one to two times per month. He reports he has a significant better understanding of what it means to make amends, what justice means and what charity means.

Mr. Kivett continues in his seven-year long relationship with Ms. Terri Dugas and they have an active relationship with each other. He states, "I think we'll eventually get married." He reports a positive relationship with her and recognizes the relationship is a very positive relationship for his life now and in the future.

Summary and Opinions:

To clarify my original comments regarding this case, it is my professional opinion that Mr. Kivett does not suffer from any mental, psychological or emotional condition that would significantly impair his professional judgments or performance, or competence in the

Kivett Evaluation Report #2

March 3, 2014

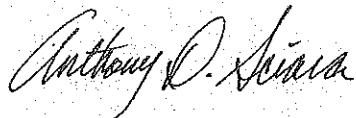
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representation of female clients. Mr. Kivett has no specific diagnosis. It is my professional opinion there is nothing that would contraindicate his regaining his law license and resuming the practice of law, including working with female clients.

He is quite clear that his practice will be highly scrutinized and he has considered to some significant extent what he would do to protect himself against any further complaints regarding his behaviors with any clients whom he might represent.

In summary, it is my conclusion that Mr. Kivett has completed over two years of licensure suspension, has completed all the tasks required of him, has completed my evaluations appropriately, and there is no indication in my professional opinion that he suffers from any condition creating a predisposition for inappropriate sexual behavior which would keep him from the unfettered practice of law.

Respectfully submitted,

A handwritten signature in cursive script, reading "Anthony D. Sciara". The ink is dark and the signature is fluid, with a large initial 'A' and 'S'.

Anthony D. Sciara, Ph.D., ABPP

VERIFICATION

Anthony D. Sciara, Ph.D., first being duly sworn, deposes and says that he has prepared and read the attached Re-evaluation Report of Gary B. Kivett dated March 3, 2014 and that the same are true and accurate and contain his professional opinions formed following a comprehensive psychological evaluation of Mr. Kivett.

This 5th day of March, 2014.



Anthony D. Sciara, Ph.D., ABPP (Clinical)

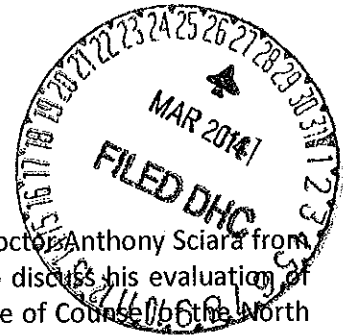
Sworn to and subscribed before me this 5th day of MARCH, 2014.

Ruth R. Casgrave
Notary Public

My Commission Expires: 5/14/17

[seal]

WAIVER AND RELEASE AUTHORIZATION



The undersigned Gary B. Kivett waives any claim of privilege and releases Doctor Anthony Sciara from any liability associated therewith and hereby authorizes and instructs him to discuss his evaluation of Gary B. Kivett with Margaret Cloutier or any other representative of the Office of Counsel of the North Carolina State Bar and further authorizes and instructs him to release any corresponding records to Margaret Cloutier or any other representative of the Office of Counsel of the North Carolina State Bar.

This the 24th day of March, 2014

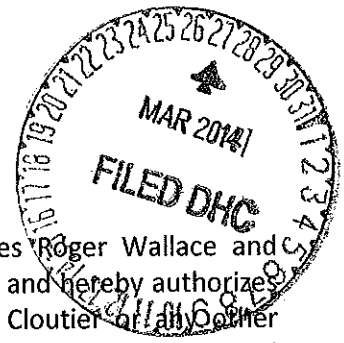
Gary B. Kivett
Gary B. Kivett

WAIVER AND RELEASE AUTHORIZATION

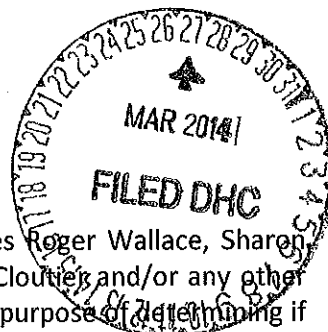
The undersigned Gary B. Kivett waives any claim of privilege and releases Roger Wallace and Foundations Psychological Services, P. A. from any liability associated therewith and hereby authorizes and instructs him to discuss his evaluation of Gary B. Kivett with Margaret Cloutier or any other representative of the Office of Counsel of the North Carolina State Bar and further authorizes and instructs him to release any corresponding records to Margaret Cloutier or any other representative of the Office of Counsel of the North Carolina State Bar.

This the 24th day of March, 2014

Gary B. Kivett
Gary B. Kivett



WAIVER AND RELEASE AUTHORIZATION



The undersigned Gary B. Kivett waives any claim of privilege and releases Roger Wallace, Sharon Boyles and Foundations Psychological Services, P. A. to confer with Margret Cloutier and/or any other representative of the Office of Counsel of the North Carolina State Bar for the purpose of determining if Gary B. Kivett has co-operated and complied and continuous to co-operate and comply with the recommended treatment prescribe by Roger Wallace in his Psychological evaluation of Gary B. Kivett. Further, the above named are released form any liability therefore.

This the 24th day of March, 2014

Gary B. Kivett

Gary B. Kivett